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June 3, 1996

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VIA HAND-DELIVERY

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (Separate Filing on Rights-of-Way, Dialing Parity and Number Administration)

Dear Mr. Caton:

Enclosed are an original and 16 copies of the Reply Comments of WinStar Communications, Inc. in the above-captioned matter. Also enclosed is a copy to date-stamp and return in the self-addressed, stamped envelope.

Thank you for your attention to this matter.

Sincerely,

Dana Frix

Counsel for WinStar Communications, Inc.

Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20054

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In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-98
Local Competition Provisions of the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF WINSTAR COMMUNICATIONS, INC. ON ACCESS TO RIGHTS OF WAY, DIALING ISSUES, AND NUMBER ADMINISTRATION

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Dated: June 3, 1996

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EXECUTIVE SUMMARY

WinStar reply comments may be summarized as follows:

Access to Rights-of-Way: As it interprets § 224(f) of the amended Communications Act of 1934 ("Act"), WinStar urges the Commission to create national standards for access to rights-of-way. The Commission should emphasize that the duty of incumbent local exchange carriers ("LECs") to provide nondiscriminatory access to their rights-of-way is absolute. Owners or controlling parties of rights-of-way may not prefer either themselves or their customers. WinStar next argues that Commission's rules should not require competitive local exchange carriers ("CLECs") to provide incumbent LECs with access to rights-of-way because § 224(f) of the Act applies only to incumbent LECs. While WinStar suggests that the Commission address in a separate proceeding the substantive content of rules interpreting an electric utility's ability to deny access to a particular right-of-way under § 224(f)(2) of the Act, WinStar argues against placing the burden of establishing the criteria of that subsection on new entrants. Electric utilities should more appropriately carry the burden. WinStar discusses the proposals to set a certain time period for notifying attaching entities of modifications to rights-of-way and instead argues that the reasonableness of notification depends on whether the attaching entity is able to avoid interference with its network. Finally, WinStar contends that additional profits resulting from modifications to rights-of-way proportionately paid for by attaching entities must be shared with those entities.

Dialing Parity: WinStar believes that the Commission should adopt a national policy to ensure the immediate adoption of absolute dialing parity and to prohibit the implementation of any dialing plan that would force consumers to dial extra digits to reach new entrants for either local or toll calls. Insofar as the Commission's rules on dialing parity require presubscription for intraLATA toll calling, they should apply not only to the Bell Operating Companies and GTE, but to independent telephone companies as well, either when they offer interLATA services or no later than February 8, 1999. In addition, Commission should develop national policy on recovery of dialing parity costs that distinguishes between the common and shared costs incurred to establish, maintain or administer dialing parity and the costs which each individual carrier must incur to conform its own operations. While incumbent LECs should be able to recover common or shared costs, the Commission should ensure that incumbents LECs are not able to shift their individual costs to competitors inappropriately. Finally, the Commission should promulgate national standards mandating nondiscriminatory access to bottleneck functions such as telephone numbers, operator services, directory assistance and directory listings.

Number Administration: Although the Commission has taken steps toward appointment of a neutral North American Numbering Plan administrator, the Telecommunications Act of 1996 ("1996 Act") requires immediate completion of that task and expeditious transfer

to the administrator of all duties and responsibilities formerly undertaken by incumbent LECs. Designation of an administrator does not mean that the Commission should cede its supervisory authority of numbering issues. It should set clear guidelines for the states regarding nondiscriminatory access to numbering resources and be prepared to review state decisions inconsistent with those guidelines.

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REPLY COMMENTS OF WINSTAR COMMUNICATIONS, INC. ON ACCESS TO RIGHTS OF WAY, DIALING ISSUES, AND NUMBER ADMINISTRATION

WinStar Communications, Inc. ("WinStar"), by its undersigned counsel and pursuant to Section 1.415 of the Commission's rules, submits these reply comments in accordance with the Commission's April 19, 1996 Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. WinStar is a publicly-held company (traded on the NASDAQ) which, among other things, develops, markets, and delivers local telecommunications services in the United States.[1/] The passage of the Telecommunications Act of 1996 ("1996 Act")[2/] should hasten WinStar's ability to provide competitive services — particularly, local exchange services.

1/ WinStar is authorized to provide facilities-based telecommunications service in the nation's 43 largest metropolitan statistical areas. WinStar's operating companies have been approved to offer competitive local exchange carrier services on a facilities bases in nine states, and applications for such authority are pending in six additional states. In addition, WinStar's affiliates have received authority to operate as competitive access providers in 22 states, and have applications pending in nine other states. A separate WinStar subsidiary provides switched and switchless long distance services on a resale basis.

2/ Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56 (1996) ("1996 Act"). Herein, "Act" refers to the Communications Act of 1934, as amended by the 1996 Act.

On May 16, 1996, WinStar filed substantial comments in this proceeding which described WinStar and its services in detail, and which were designed to assist the Commission in understanding the unique concerns of a fixed point-to-point wireless competitive local exchange carrier ("CLEC"). WinStar will not repeat that information here, but incorporates those comments by reference. As requested by the Commission in its NPRM, comments being filed today address concerns relating to three distinct issues: access to rights of way; dialing parity; and number administration.

I. ACCESS TO RIGHTS-OF-WAY (NPRM, at ¶¶ 220-25)

As comments in this phase of the proceeding demonstrated, the ability of new entrants to access rights-of-way[3/] is integrally related to their prospects for successfully entering the local exchange market. In its initial comments, WinStar explained that the 1996 Act grants it the right to access the roofs and riser conduit of LEC buildings where it collocates. WinStar also noted that § 224 of the Act allows it to use rights-of-way either owned or controlled by incumbent LECs or other utilities. Significantly, no commenter opposed either position.[4/] WinStar will not repeat its earlier comments here. In these reply comments, WinStar responds to the assertions of parties regarding: 1) the meaning of "nondiscriminatory" access in § 224(f) and the need for national

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[3/] In these reply comments, WinStar uses the term "rights-of-way" to mean roofs, risers, pole attachments, conduit, ducts, easements, or whatever other tangible space where utilities, including incumbent LECs, have a right (contractual or otherwise) to place their telecommunications equipment

[4/] Considering WinStar drew its positions directly from the Act, perhaps the lack of resistance should not be surprising.

standards, and 2) application of the exception in § 224(f)(2) that permits electric utilities to deny access to their rights-of-way.

A. The Meaning of Nondiscriminatory Access (NPRM, at ¶ 222)

1. National Standards Defining the Term "Nondiscriminatory Access" Are Necessary (NPRM, at ¶ 222)

In the instant proceeding, the Commission should define the term "nondiscriminatory access" as part of national standards governing access to rights-of-way. Many commenters supported the need for the Commission to set national standards.[5/]

On the whole, incumbent LECs opposed national standards on the grounds that they would be unworkable and that the provisions of § 224 are self-executing.[6/] Although WinStar agrees that parties may dispute access to a particular right-of-way for a number of reasons, it by no means believes that national standards would be worthless. There is no indication that rights-of-way issues lack common themes or points of conflict. Indeed, Congress was able to identify areas where it expected disagreements to arise over attachments to the rights-of-way of electric utilities in § 224(f)(2). National standards explicating the parameters of "nondiscriminatory access" would help guide parties as they negotiate access to rights-of-way. Standards would serve to minimize controversy and, in the process, reduce the number of occasions where the Commission is asked to settle the parties' differences.

5/ Comments of MCI at 22; ACSI at 4; AT&T 12-15; NEXTLINK at 5.

6/ Comments of EEI/UTC at 5-6; Ohio Edison at 7-8; US West at 16; PNM at 11-12, 21; PacTel at 18; Delmarva at 6-7; BellSouth at 13; GTE at 22; RTC at 10.

The provisions of § 224(f) are hardly self-executing. In reality, the subsection contains only twenty-seven words that actually apply to incumbent LECs (*i.e.*, the text of § 224(f)(1)). Parties, and the Commission itself, cannot be expected to rely on such an abbreviated statement of the law on access to rights-of-way. As is customary with most Congressional enactments, the Commission must apply its expertise to "flesh out" Congressional intent.

2. *The Duty to Provide Nondiscriminatory Access Is Absolute (NPRM, at ¶ 222)*

As commenters generally agreed, the term "nondiscriminatory access" means that the incumbent LEC must provide access to its rights-of-way on the same terms and conditions that are available to itself, its affiliates or its most favored customers.[7/] Some commenters urge the Commission to invent an exception for owners to prefer themselves over other entities seeking to place attachments on rights-of-way. For instance, Bell Atlantic argues that it should be able to deny access whenever it has plans to use the space in question within the next two or three years.[8/] Pacific Telesis ("PacTel") similarly contends that owners may treat themselves differently in certain limited respects.[9/]

The duty of incumbent LECs to provide access to their rights-of-way is absolute. Unlike electric utilities, Congress supplied no basis on which incumbent LECs could deny access to

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7/ Comments of GCI at 3; MCI at 21, 22-23; GVNW at 9; AT&T at 16; TRA at 13; Frontier at 6; ALTS at 7; ACSI at 5; Sprint at 16.

8/ Comments of Bell Atlantic, at 13-14.

9/ Comments of Pacific Telesis at 19-20.

rights-of-way that they own or control. Act, § 224(f).[10/] In deliberately singling out the rights-of-way of electric utilities for special protection in § 224(f)(2), Congress expressed its intention to create an absolute duty to provide nondiscriminatory access on the part of incumbent LECs. The Commission should not amend the Act by implying some sort of "owners' privilege" to deny access. If an owner is not making use of a particular right-of-way, under the plain terms of the Act, it does not have the right to deny new entrants access.

3. *There Is No Duty for CLECs to Provide Incumbent LECs with Access to Rights-of-Way (NPRM, at ¶ 222)*

PacTel implausibly argues that it is discriminatory, under § 224(f)(1), for CLECs to deny incumbent LECs access to rights-of-way that they own or control.[11/] What PacTel declines to mention is that Congress expressly denied incumbent LECs the right to request access under § 224(f)(1). Section 224(a)(5) states that "the term 'telecommunications carrier' . . . does not include any incumbent local exchange carrier . . . ." Thus, when § 224(f)(1) grants "telecommunications carriers" the right to nondiscriminatory access to rights-of-way, it clearly does not confer a similar right on incumbent LECs. Under the plain text of the Act, the Commission simply lacks authority to order CLECs to offer nondiscriminatory access to their rights-of-way, to the extent they may own them in the first place.

10/ Section 224(f)(2) of the Act states:

> a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.

11/ Comments of Pacific Telesis at 23.

B. Denial of Access to Rights-of-Way by Electric Utilities Based on Safety, Reliability, Engineering or Space Constraints (NPRM, at ¶ 223)

1. National Standards in this Area Should Be Developed in a Separate Proceeding (NPRM, at ¶ 223)

WinStar unreservedly encourages the Commission to promulgate rules defining national standards for § 224(f)(2) and opposes commenters who argue that devising such standards is impracticable. But WinStar believes that it would be inappropriate, in the context of the instant proceeding, to attempt to define what Congress meant by "insufficient capacity" or "reasons of safety, reliability and generally applicable engineering purposes." Act, § 224(f)(2). Here, the record is insufficiently developed for the Commission to render a well-informed decision in regard to such inherently technical issues. The Commission should defer these issues to the proceeding it plans to hold to create rules for § 224(e).[12/] Given that the purpose of the proceeding at hand is to implement § 251(b)(4),[13/] the Commission can resolve issues under § 224(f) applicable to incumbent LECs without addressing the exception provided in § 224(f)(2) for electric utilities.

2. An Electric Utility That Wishes to Deny Access to Its Rights-of-Way Must Carry the Burden of Establishing the Statutory Criteria for Denial within a Short Mandatory Time Period (NPRM, at ¶ 223)

Notwithstanding WinStar's request that the Commission deal with § 224(f)(2) in a separate proceeding, WinStar wishes to counter the argument that CLECs should be saddled with the burden of establishing that the exception in § 224(f)(2) does not apply to a particular right-of-

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12/ *See* NPRM, at ¶ 221, n 301.

13/ *See* NPRM, at ¶ 221 ("In this proceeding, however, we believe that we should address issues raised by new sections 224 (f) and (h), to ensure that we have an opportunity to seek comment and establish any rules necessary *to implement section 251(b)(4)* within the six month period established by the statute") (emphasis added).

way.[14/] It makes absolutely no sense for applicants seeking access to rights-of-way under § 224(f)(1) to have to demonstrate that no safety, reliability, engineering or space concerns are implicated by the proposed use of the right-of-way. Electric utilities that want to be exempted from § 224(f)(1) logically must carry the burden of showing that they qualify for the exception provided in § 224(f)(2). These utilities have the necessary information regarding the particular right-of-way at issue and many years of expertise administering joint use of rights-of-way in general. They are the most appropriate parties to carry the burden of production, and the ultimate burden of persuasion, if they want to benefit from the exception provided by § 224(f)(2). In no circumstance should the Commission permit adjudication over § 224(f)(2) to become a forum for litigating whether nondiscriminatory access to rights-of-way is in the public interest. Congress already has made that determination and afforded electric utilities only one narrow exception from the scope of § 224(f)(1).

The Commission should also place a short mandatory time limit within which an electric utility, seeking to deny access to its rights-of-way, must satisfy the criteria of § 224(f)(2). A refusal in the first instance may effectively preclude a facilities-based provider from entering the market for many months in large part due to its inability to build out its network while the decisional process drags on. The Commission must realize that access delayed may be no different than access denied. Disputes over rights-of-way need to be resolved expeditiously. The Commission should take the first step by requiring electric utilities, attempting to invoke the

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[14/] Comments of EEI/UTC at 11; Infrastructure Owners at 40-41; Virginia Power at 14-15; Con Edison at 11.

exception provided in § 224(f)(2), to make the necessary showings within a short mandatory time period.

C. Notice of Modifications to Rights-of-Way and Related Cost Issues (NPRM, at ¶¶ 224-25)

1. The Commission's Rules Should Afford Attaching Entities Whatever Notice Is Necessary for Them to Avert Interference With Their Networks (NPRM, at ¶¶ 224-25)

Commenters have suggested that owners seeking to modify their rights-of-way provide "reasonable opportunity" under § 224(h) for attaching entities to adjust their operations with notice given in as few as 10 days [15/] or as many as 12 months.[16/] WinStar does not favor setting a specific notice period at this time. As it argued in its initial comments, attaching entities need whatever notice is reasonably sufficient to enable them to avert interference with their networks. Congress's decision to set aside a separate subsection primarily to address the issue of notice manifests its desire to protect the network operations of attaching entities from being unduly disturbed. The Commission should give effect to Congressional intent and design the notice standard from the perspective of the attaching entity.

2. Attaching Entities that Bear a "Proportionate Share of the Costs" of Making a Right-of-Way "Accessible" Under § 224(h) Must Receive an Offset for Any Additional Profits that the Owner or Controlling Entity Generates Due to the Modifications (NPRM, at ¶¶ 224-25)

Several commenters opposed allowing attaching entities, that pay a "proportionate share of the costs" under § 224(h) of making an individual right-of-way "accessible," to receive a credit

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[15/] Comments of Delmarva at 23; Infrastructure Owners, at 45; Ohio Edison, at 24; PNM, at 26.

[16/] Comments of TCG, at 10.

for any additional profits that result from the modified right-of-way.[17] They argue that because the owning or controlling entities do not undertake modifications with an eye toward generating profits, they have no duty to charge attaching entities only the actual cost of the modifications, nor to share any additional profits that may result. They urge the Commission to ignore the true costs of a particular set of modifications and sanction the windfall that would accrue to the owning or controlling parties. WinStar submits that when Congress used the words "proportionate share of the costs," it did not intend for the Commission's rules to legitimize the windfalls that no doubt would befall certain owning or controlling parties. Act, § 224(h). Rather, Congress intended for attaching entities only to bear their proportional share of the actual costs incurred and expected that they would be fully entitled to a proportionate share of any additional profits that result from such modifications.

II. DIALING PARITY (NPRM, at ¶¶ 202-219)

A. The Commission Should Require Absolute Dialing Parity

Commenters overwhelmingly agree with WinStar that dialing parity for local calling is both required by the 1996 Act and essential to providing new entrants with the opportunity meaningfully to compete in the local exchange market. As WinStar stated in its initial comments, the Commission should design rules requiring absolute dialing parity for all services regardless of the jurisdictional nature of the call (*i.e.*, for international as well as interstate and intrastate, local and toll services).[18]

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[17] Comments of Bell Atlantic at 16; NU System Cos. at 7.

[18] Comments of WinStar at 10.

Any distinction in dialing patterns between new entrants and incumbent LECs will discourage competition by unreasonably favoring the incumbent.

Because strong public policy demands dialing parity, the Commission should not hesitate to take a leadership role in ensuring that absolute dialing parity is implemented in a timely fashion throughout the country. Accordingly, the Commission should promulgate nationwide dialing parity standards. These standards should require the immediate adoption of dialing parity for local services and should prohibit the implementation of any dialing plan that would force new entrants to adopt non-standard dialing for local or toll calls, which would place them at a competitive disadvantage vis-a-vis the incumbent.

Although the 1996 Act's statutory requirements of intraLATA dialing parity apply only to the Bell Operating Companies and GTE, WinStar agrees with BellSouth that the obligation to provide intraLATA dialing parity should extend to independent telephone companies either when they offer interLATA services or no later than February 8, 1999.[19/] As BellSouth notes, it would be contrary to the policy underlying the 1996 Act not to require universal adherence to dialing parity requirements. (*Id.*) In addition, as the majority of the commenters suggested, the Commission should denote presubscription as the mechanism for achieving dialing parity.

B. The Commission Should Adopt a National Standard for Cost Recovery

For the most part, commenters disagreed over how the costs associated with dialing parity should be recovered. Commenters differed both on the extent of the costs that should be recovered and the manner in which cost recovery should occur. For example, AT&T argued that only the

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[19/] Comments of BellSouth at 12-13.

incremental costs of achieving dialing parity (excluding revenue losses and general network upgrades) should be recovered via a presubscribed line charge like the "Equal Access Recovery Charge" mechanism.[20/] In contrast, Southwestern Bell along with the other BOCs argued that the entire costs of dialing parity should be recovered, including shared costs and costs associated with network upgrades that enable the carrier to provide dialing parity.[21/]

This disagreement among commenters underscores the need for the Commission to develop national standards to ensure that incumbent LECs are unable to shift costs inappropriately to burden new market entrants. In developing this national standard, the Commission should distinguish between the common or shared costs incurred to establish, maintain or administer dialing parity and the costs which each individual carrier must incur to conform its own operations. While WinStar agrees that common or shared costs should be recovered through charges to other carriers, the Commission should not allow incumbent LECs to recover their individual costs from competitors. It would be detrimental to competition and highly discriminatory to implement a cost recovery mechanism that would allow the BOCs and GTE to recover their individual costs from competitors, while CLECs, wireless providers and toll carriers are forced to bear their own costs of upgrading to comply with a presubscription requirement. Because all carriers will have to modify their systems and networks to accommodate presubscription, it is imperative that the Commission implement a national cost recovery standard that prohibits one group of carriers from recovering their individual costs via the pocketbook of their competitors.

20/ Comments of AT&T at 7.

21/ *See, e.g.*, Comments of Southwestern Bell at 8-9.

WinStar also recommends that when determining how incremental costs should be recovered, the Commission should base the decision on a carrier's presubscribed lines rather than its gross revenue. An assessment based on presubscribed lines will more accurately recover costs based on actual use of the network, and therefore, would be more competitively neutral.

C. Initial Comments Underscore the Need for National Standards Mandating Nondiscriminatory Access to Bottleneck Functions such as Telephone Numbers, Operator Services, Directory Assistance, and Directory Listings

As WinStar noted in its initial comments, the 1996 Act requires LECs to provide "nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing[s]" to CLECs. 1996 Act § 251(b)(3). This requirement is essential to furthering competition because new entrants such as WinStar cannot provide service without telephone numbers and nondiscriminatory access to operator services, directory assistance and directory listings. Notwithstanding this plain mandate and the importance of these functions, some commenters question whether incumbent LECs are in fact required to make these resources available to new entrants.

For instance, Bell Atlantic and USTA argue that although the 1996 Act requires incumbent LECs to provide CLECs with nondiscriminatory access to operator services, directory assistance and directory listings, it does not obligate incumbent LECs to provide such services to CLEC customers.[22/] Bell Atlantic also argues that the obligation to resell extends only to telecommunications services and not to information services and claims that some aspects of its

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22/ Comments of Bell Atlantic at 6-7; USTA at 6-7.

operator services are information services.[23] Similarly, both US West and NYNEX argued that they should not be required to offer their operator services for resale.[24] Southwestern Bell argued that operator services should not be offered as an unbundled network element, but should be provided through negotiated agreements.[25]

This wide range of positions concerning the obligations of incumbent LECs to provide nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings highlights the need for clear national standards. With regard to numbering resources, as WinStar argued in its initial comments and further argues below in Section III, the Commission should make every effort to turn number administration over to a neutral, third-party administrator as soon as possible.[26] To ensure that new entrants receive nondiscriminatory access to operator services, directory assistance and directory listings, the Commission's rules must clarify that § 251(b)(3) of the 1996 Act requires incumbent LECs to make these services available to new entrants.[27] A national policy also is essential to ensure that operator services, directory assistance, and directory listings are uniformly available to CLECs throughout the country. Incumbents must be prohibited from unilaterally refusing to provide new entrants with such services that are plainly essential to competition.

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[23] Comments of Bell Atlantic at 8.

[24] Comments of US West at 9-10; NYNEX at 7.

[25] Comments of Southwestern Bell at 6.

[26] Comments of WinStar at 13.

[27] As WinStar stated in its initial comments, operator services, directory assistance and directory listings should be made available at cost-based rates. Comments of WinStar at 14.

III. THE 1996 ACT MANDATES RAPID SELECTION OF A NEUTRAL NUMBERING PLAN ADMINISTRATOR AND NONDISCRIMINATORY ACCESS TO NUMBERING RESOURCES (NPRM, at ¶¶ 250-61)

A. A Neutral Numbering Plan Administrator Must Be Selected Without Delay (NPRM, at ¶¶ 250-61)

As a new entrant providing local services in over 30 states using 38 GHz microwave transmission facilities, availability of numbering resources is critical to WinStar's success in local markets. Currently, incumbent LECs are responsible for number administration in their numbering areas. As the Commission is aware, without NXX codes, WinStar or other new entrants are unable to acquire new customers for local service. As Comments of Omnipoint indicate, incumbent LEC administration is anything but neutral.[28/] Indeed, WinStar's operations would be severely hampered if its experience in obtaining codes was similar to Omnipoint's. However, recent developments suggest that such anticompetitive code administration is nearing an end. First, the Commission's 1995 numbering plan decision created a North American Numbering Council ("Council") to oversee a neutral North American Numbering Plan Administrator.[29/] Second, the 1996 Act expressly mandates neutrality in assigning numbering resources. The 1996 Act confers exclusive jurisdiction upon the Commission for the North American Numbering Plan ("Plan") and empowers it to designate a neutral administrator for the Plan. 1996 Act, § 251(e)(1). As noted above, the 1996 Act also provides all carriers the right

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[28/] Comments of Omnipoint at 1-2 (after a five month delay, all LECs on the Industry Numbering Committee voted against Omnipoint's request for assignment of a general purpose NPA code without discussion, denying it that code).

[29/] *In the Matter of the North American Numbering Plan*, CC Docket No. 92-237 (released July 13, 1995) ("*NANP Order*").

of nondiscriminatory access to numbering resources. 1996 Act, § 251(a)(3). While these developments provide a basis for neutral numbering administration, further Commission action is necessary.

WinStar agrees with the Commission's tentative conclusion in ¶ 252 that the *NANP Order* fulfills the 1996 Act's requirement of *designating* a neutral plan administrator. The Commission's action, however, is not complete. The *NANP Order* established a process in which it will accept nominations for the Council, which in turn will select a plan administrator within six months. While Council membership nominations were due last fall, the Commission has yet to appoint Council members so that they may select an administrator. Full implementation of the *NANP Order* under the timetable it sets up is over 27 months behind schedule.[30/] While this timetable might have been adequate before passage of the 1996 Act, it is not so now. The 1996 Act appears to require, at a minimum, that at least Council members be designated by August 8, 1996. 1996 Act, § 251(d)(1).[31/] After the Council is formed, selection of an administrator should follow as soon as possible.

SBC Communications asserts that the complexity of numbering administration weighs in favor of incumbent LECs retaining code assignment duties until an unspecified future date — even

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30/ Comments of BellSouth at 19.

31/ When Council members are named, WinStar respectfully requests that the Commission consider its candidate, David W. Ackerman, Executive Vice President of WinStar. *See Application of WinStar Communications, Inc. for Membership on the North American Numbering Council*, CC Docket No. 92-237 (Oct. 24, 1995). As a wireless microwave telecommunications carrier, WinStar can bring to the Council a unique competitive, technological, and practical perspective distinct from that of wireline LECs (either incumbents or new entrants). Further, Mr. Ackerman's extensive experience, much of it in wireless telephony, would be an asset to the Council.

after appointment of a neutral administrator.[32/] Such delay is plainly unacceptable and contrary to the letter and spirit of the 1996 Act. Once there is a neutral plan administrator, LECs must cede their assignment functions as soon as practicable. In the interim, the Commission must strictly enforce neutral number administration.

B. Although the Commission May Delegate a Role to the States in Number Administration, It Should Provide Clear Guidance Regarding Nondiscriminatory Access to Numbering Resources and Must Review Inconsistent State Decisions (NPRM, at ¶¶ 250-61)

One way in which the Commission can ensure neutral number administration, both before appointment of an administrator and after, is to retain final supervisory authority over numbering issues. The 1996 Act specifies that the Commission retains exclusive jurisdiction over North American Numbering Plan issues but provides that it may delegate some of this jurisdiction to the states. 1996 Act, § 251(e)(1). Certainly the states can fulfill a significant, constructive role in numbering administration. As stated in its initial comments, WinStar supports the Commission's tentative conclusion in ¶ 257 that it delegate matters involving implementation of new area codes (such as determination of area code boundaries) to state regulatory commissions.[33/] However, the states must act consistently with the pro-competitive purposes of the 1996 Act. For example, despite the Commission's conclusion that service-specific overlay plans for area code relief are anticompetitive,[34/] Texas has ordered a wireless overlay. (NPRM, ¶ 257.) In fact, overlay plans

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32/ Comments of SBC Communications at 11-13.

33/ Comments of WinStar at 15.

34/ *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois*, 10 FCC Rcd 4596 (1995) (recon. pending).

generally are anticompetitive because they discriminate against new entrants in the allocation of numbering resources. Because of its anticompetitive nature, WinStar suggests that the Commission establish clear guidelines that create a presumption against overlay plans. These guidelines should provide that in the event a state desires to adopt an overlay plan, the state must first consult with the Commission and the Council (once constituted). In addition, should a state adopt an overlay plan after consultation with the Commission and the Council, two conditions must apply. First, overlays should be prohibited until and unless permanent number portability is implemented. This condition will mitigate the anticompetitive effect of overlays on new entrants, whose customers currently would have to be assigned to the overlay area code. Second, an overlay should always be accompanied by 10 digit dialing for all local calls within and between the new area codes to avoid placing CLECs and wireless carriers at a competitive disadvantage. Such a requirement would limit the ability of incumbent LECs to assign seven digit numbers to their customers and 10 digit numbers to CLEC customers.

CONCLUSION

For the foregoing reasons, WinStar respectfully requests that the Commission adopt rules consistent with the principles discussed herein.

Respectfully submitted,

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Dated: June 3, 1996

CERTIFICATE OF SERVICE

I, Sheila M. Beattie, do hereby certify this 3rd day of June, 1996, that a copy of the foregoing Reply Comments of WinStar Communications, Inc. On Access to Rights Of Way, Dialing Issues, and Number Administration, CC Docket No. 96-98, was served, via first-class mail, postage prepaid, on the following parties named on the attached list.

Sheila M. Beattie